IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.258/2007.

SHRI EDUARDO FALEIRO, RAIA,
SALCETE, GOA .. Petitioner.

Versus

THE GENERAL MANAGER
TELECOM, PANAJI, GOA. .. Respondents.

Mr. M. S. Usgaonkar, Sr. Advocate with Mr. Iftikhar Agha, Advocate for the petitioner.

Mr. P. P. Singh with Ms. J. Dourado, Advocates for the respondent.

Coram :- **R. S. MOHITE, J.**

Date : - 7 th September, 2007.

P.C. :

This petition impugns an order dated 28.2.2007 passed by Civil Judge, S.D., Margaon rejecting the Judgment Debtor's objection in Special Execution Application No.27/2003/A. The facts of the case are that the petitioner was an Ex-M.P. from Goa during the period January 1993 to April 1996. Two telephones bearing No.733300 and 720800 were installed at his residence within the constituency of Goa. During this period the petitioner was the minister of State (Chemical and Fertilizers). The two telephones ran up bill of Rs.22,03,930/-. Admittedly, bills are not paid. The matter was referred to Arbitrator in view of Section 7(D) of Indian Telegraph Act, 1885. Section 7(D)(1) contemplates that a reference is to be made to "an arbitrator appointed by the Central Govt." It therefore, contemplates a Single Arbitrator. Accordingly, one Mr. P. K. Londhe Dy. General Manager (Central)Pune was appointed as the statutory arbitrator and he passed his award dated

28.9.2006 directing the petitioner to pay the amount of Rs.22,03,930/- After waiting for sufficient time of about the period of 2 years, execution proceedings was filed in the year 2003 and same Execution proceeding were numbered as No.27/2003/A. In the said execution application an objection was raised by the petitioner. The objection which was raised and which is today pressed in this petition was that U/s.11 of Arbitration and Conciliation Act,1996, a matter of arbitration was required to be conducted by 3 Arbitrators and not by one Arbitrator. It is contended that this is an issue which goes to the rout of the matter and concerns the jurisdiction of the Single Arbitrator to pass an award and therefore, even though, award was not challenged U/s. 34, it is a point could have been raised in Execution Proceeding.

The learned Counsel appearing for the petitioner has placed his reliance on precedent reported in (2003)5 Supreme Court Cases 705 in the case of ONGC Ltd. V. Saw Pipes Ltd. in para. 8. The Apex Court held that the composition of the Arbitration Tribunal should be in accordance with the agreement of the parties. In Para. 22, the Apex Court has observed that it is settled law as well as it is provided under the Code of Civil Procedure that once the decree has attained finality, in an execution proceeding it may be challenged only on limited grounds such as the decree being without jurisdiction or a nullity.

In my view, on harmonious construction of under the Indian Telegraph Act,1885 and the Arbitration and Conciliation Act 1996, there is no conflict between the provisions. The requirement to appoint 3 Arbitrators as contained in Section 11 of the Arbitration and Conciliation Act,1996 falls in part I. The applicability of part I is governed by Section 2(4) of the Arbitration and Conciliation Act,1996

is in following terms.

" This Part except sub-section (1) of Section40, section 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder." (emphasis provided.)

It is abundantly clear that if there is any provision in the Indian Telegraph Act which is inconsistent then Section 11 which falls in part I would not apply. In other words Section 11 of Arbitration and Conciliation Act contemplates the appointment of 3 Arbitrators will not prevail over the provisions of Indian Telegraph Act 1885, which contemplates the appointment of a single arbitrator. Apart from this, the Indian Telegraph Act,1885 is a special enactment which governs disputes arising under the said Act.

It is also argued that Section 7B of Indian Telegraph Act,1885 starts with a word "except otherwise expressly provided in this Act." This would suggest that if there is specific remedy in the Indian Telegraph Act,1885 then arbitration would not apply at all. My attention has brought to remedy in cases of compensation contemplated by Section 10(D) for which remedy is found U/s.16 of Indian Telegraph Act,1885. It is sought to be suggested that in the circumstances, the words " except in so far as provisions of this part is inconsistent with that of other enactment or with any rules made thereunder " must have reference to proceedings other than arbitration. I cannot accept the contention. Aforesaid words are generic in nature and make no

exception in the cases of arbitration proceeding contemplated by Section 7B.

There is therefore no error in the impugned order of the passed by Civil Judge, S.D., Margaon and the same is therefore, required to be dismissed. During the course of argument two letters are brought to my notice. First letter was written to petitioner by Central Govt. in the year 2001 and second one is dated 19th May 2004. It appears that under these two letters Central Govt accepted the liability to pay for trunk call bills within monetary limits. In their view, only 25000 local calls in a year are allowed. The letter dated 19th May 2004 indicates that this information was conveyed to the petitioner earlier. As per accepted monetary limit the Govt. therefore, paid Rs.1,13,253/- in lieu of its admitted liability. The learned Counsel appearing for the petitioner sought to contend that there is further liability of the Government. He has stated that he would like to pursue the matter to the Central Government. The Advocate appearing for the respondent states that if any warrant is issued in the execution proceeding, the same will not be enforced for 4 weeks from today. He therefore states that in case the Central Govt. think fit to accept further liability to cover the period Jan.1993 to April 1996, due adjustment in that regard will be made in favour of the petitioner. All these statements are accepted. The petition is dismissed. Authenticated copies be furnished to the parties.

R. S. MOHITE, J.

SMA